



Guatemala

Country Reports on Human Rights Practices - [2004](#)

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Guatemala is a democratic republic with separation of powers and a centralized national administration. The Constitution provides for universal suffrage to elect a one-term president and a unicameral congress. Elections for president, considered by international observers to be free and fair, were held in 2003, and Oscar Berger of the three-party coalition Grand National Alliance (GAN) won a 4-year term, which started in January. The judiciary is independent; however, it suffered from inefficiency, corruption, and intimidation.

The Minister of Government (Interior) oversees the National Civilian Police (PNC), which has primary responsibility for internal security. There are no active members of the military in the police command structure; however, the Government occasionally tasked the army with providing personnel to support the police. The law subordinates army personnel to police control during joint patrols or operations. The military is responsible for external security, and the Constitution requires that the Minister of Defense be a military officer. The influence of organized crime remained pervasive but waned considerably within the executive branch. Some members of the security forces committed human rights abuses. The civilian authorities generally maintained effective control of the security forces.

The economy is market-based, and the population is approximately 12.1 million. Apparel, nontraditional agricultural exports, and tourism grew rapidly, earning more than traditional exports of coffee, sugar, and bananas. Remittances from citizens abroad, approximately \$2.5 billion, constituted the largest source of foreign exchange, and more than 30 percent of the population depended on remittances to raise the family income above the poverty line. Foreign aid also was significant. The economic growth rate was approximately 2.5 percent. More than 50 percent of the work force and 60 percent of the poor were engaged in some form of agriculture. Inflation was about 9.3 percent. Land distribution was highly skewed: 1 percent of farms contained more than one-third of all cultivated land. There was a marked disparity in income distribution, and poverty was pervasive, particularly in the large indigenous community. Approximately 57 percent of the total population and 71 percent of persons in rural areas lived in poverty; 22 percent of the population lived in extreme poverty. Combined unemployment and underemployment reached an estimated 18 percent, and 70 percent of the population was employed in the informal sector.

The Government generally respected the human rights of its citizens; however, very serious problems remained in some areas. There were credible reports of unlawful killings by security forces. There were no substantiated reports of politically motivated killings. The U.N. reported that "social cleansing" continued. The number of reported lynchings remained approximately the same as the previous year. On January 19, the Supreme Court reinstated the 30-year sentence of Colonel Juan Valencia Osorio for the 1990 murder of anthropologist Myrna Mack Chang, which had been previously overturned by an Appeals Court in 2003.

There were credible reports of individual police officers' involvement in kidnappings for ransom. Security forces tortured, abused, and mistreated suspects and detainees. Prison conditions remained harsh. In most cases, the prosecutorial and judicial systems did not ensure full and timely investigations, fair trials, or due process. Arbitrary arrest and lengthy pretrial detentions were problems. Judges and other law enforcement officials were subjected to intimidation and corruption. Impunity was pervasive, although efforts to reform the judiciary continued. Members of the media were targets of attacks and intimidation. The number of attacks on members and employees of nongovernmental organizations (NGOs) and human rights workers by unidentified persons decreased slightly during the year, although one organization received a significant threat. Violence increased, and discrimination against women persisted, as did societal abuse of children and discrimination against persons with disabilities and indigenous people. Trafficking in persons was a problem. There were reports of retaliation by employers against workers who sought to form unions and participate in union activities, and the Government did not enforce consistently laws to protect workers who exercised their rights. There was widespread employment of minors in the informal sector.

During a February 25 ceremony for the National Day for the Dignity of Victims of Violence, President Oscar Berger "re-launched" the 1996 Peace Accords as a national agenda and symbolically apologized to the citizens on behalf of the State for human rights violations committed during the 36-year civil conflict.

In June, the Berger Administration reduced the size of the military from an authorized strength of 27,214 to 15,500 personnel, eliminated 7 major military commands and units, and reduced the military budget to 0.33 percent of Gross Domestic Product (GDP), far below the ceiling required by the 1996 Peace Accords. In August, the military made public a new doctrine, a core part

of which addresses the importance of protecting and promoting human rights.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, security forces committed a number of unlawful killings. The Government arrested and prosecuted some of those responsible; however, as in 97 percent of all homicide cases nationwide, the weak investigative, enforcement, and prosecutorial system prevented the Government from adequately investigating killings and other crimes or arresting and successfully prosecuting perpetrators (see Sections 1.c. and 1.e.). The U. N. Mission in Guatemala (MINUGUA) reported several cases in which military and police officials were responsible for killings, usually for criminal motives. During the year, the PNC Office of Professional Responsibility (ORP) investigated 51 reports of police involvement in killings.

In December 2003, two military personnel, Marvin Juan Luis and Floridalma Paz Gallardo, acting on orders from Colonel Luis Carvajal, former head of the Army's protocol office, shot and killed his wife Ingrid Lima de Carvajal. All three were in prison awaiting trial at year's end. Other members of the military allegedly threatened the victim's mother and sister if they acted as co-plaintiffs in the case. There were other reports of military or police involvement in unlawful killings.

On January 26, David Ixcol Escobar, a former gang member, complained to the press that two police cars had blocked him, and several officers had threatened his life. The next day, he and a friend were found shot to death. The following day, a witness to the killing was shot multiple times and killed. The Public Ministry created a case file regarding the threats against Escobar; however, neither it nor the ORP had any record of an investigation into the killings.

On July 22, unknown individuals shot and killed Jesus Mendoza, a cousin of Otoniel de la Roca Mendoza (a witness in the 2000 Inter-American Court of Human Rights (IACHR) case on the 1992 disappearance of guerilla leader Efraim Bamaca Velasquez). Some human rights leaders alleged that the killing was related to De la Roca's 2000 testimony before the IACHR. By year's end, the authorities had not arrested anyone for the killing.

On August 31, members of the PNC entered the Nueva Linda plantation in Champerico, Retalhuleu to execute a court order to evict over 1,000 peasants who illegally occupied the land. In the ensuing conflict, 3 police and 7 workers were killed and more than 20 were injured, including 1 police officer who subsequently died from his wounds (see Section 1.c.).

The Special Unit for Human Rights charged two persons for the July 2003 killing of Josue Israel Lopez, Auxiliary Human Rights Ombudsman for Chimaltenango Province. Both were in prison awaiting trial at year's end.

On October 6, the Quiche Penal Court convicted and sentenced Miguel Xon Morales to 15 years in prison for the April 2003 killing of his cousin, human rights activist and Mayan priest Diego Xon Salazar.

In September, the case of the May 2003 killing of Mayan priest Gerardo Cano Manuel was closed after the only witness was killed.

There were no developments and none were expected in the following cases: The 2002 shootout between members of the Criminal Investigative Service (SIC) of the PNC and military intelligence personnel; the 2002 alleged police killing of Rudy Castillo and Erick Garcia in Sumpango, Sacatepequez, or the 2002 killing of William Ruano Mayen.

Most cases of political killings from past years remained unresolved in national courts, such as those of former presidential candidate Jorge Carpio in 1993 and, in 2001, of Luis Garcia, a witness in the 1998 Gerardi case. There was some progress in cases of past extrajudicial killings by members of the security forces; however, in many other cases, there was little or no progress.

On January 19, the Supreme Court reinstated the 30-year sentence against Colonel Juan Valencia Osorio for the 1990 killing of anthropologist Myrna Mack Chang. However, on January 22, Valencia Osorio escaped from police custody while under house arrest pending the reinstatement of his sentence. Military officers allegedly aided with the disappearance, and Valencia remained a fugitive at year's end. On April 22, President Berger made a formal apology to the Mack family. The Government had not allocated funds to pay the \$779,000 (6.2 million quetzals) reparations to the Mack family ordered by the IACHR by year's end.

On April 19, the Government held a ceremony to honor Jose Merida Escobar, the primary investigator in the Mack case, who was killed in 2001 after presenting evidence against Noel de Jesus Beteta.

During the year, prosecutors in the 1998 murder of Bishop Juan Gerardi, the Coordinator of the Archbishop's Office on Human

Rights (ODHAG), investigated 10 or more suspects thought to be involved in the killing, while awaiting a decision on an appeal filed with the Third Appeals Court in January that requested that the Fourth Penal Court be recused from hearing the case. The appeal became moot when the members of the Penal Court were replaced after the October election of a new Supreme Court.

According to MINUGUA, in 90 percent of the over 600 massacres committed during the 36-year civil conflict, the Government never investigated or prosecuted anyone. However, there was progress on three cases during the year.

In April, during an IACHR hearing, the Government accepted responsibility for the 1982 massacre in Plan de Sanchez, Baja Verapaz, in which the army and armed paramilitary groups (PACs) allegedly killed 268 people. The Court ruled against the Government and ordered it to pay \$8 million (64 million quetzals) in reparations to the survivors.

On July 9, the Coban Sentencing Trial sentenced 14 military personnel, 1 lieutenant and 13 enlisted troops, to 40 years in prison each for the murder of 11 and injury to 35 civilians during the 1995 Xaman massacre.

The trial of six former PACs for their suspected participation in the 1982 Rio Negro massacre in Rabinal, Baja Verapaz was scheduled to begin in October (see Section 1.e.); however, it was delayed until early 2005 due to minor procedural errors. At year's end, police continued to search for former Army Captain Jose Solares Gonzalez for his alleged participation in the massacre.

The case of the 1982 military massacre of 250 civilians at Dos Erres, Peten, remained stalled in court by 36 motions of appeal by the defense.

Unlike 2003, exhumations of secret mass graves continued throughout the year without major threats. Forensic scientists have exhumed more than 2,857 remains from more than 321 sites since exhumations began in 1992. During the year, forensic scientists exhumed 433 remains from 71 different sites. Exhumation teams have increased their productivity tenfold since commencing operations in 1992 but noted that demand for exhumations increased in recent years, and the work could continue for several decades. Most of the bodies recovered were those of civilian victims of military or paramilitary killings in the early 1980s. Forensics groups used the information obtained from the exhumations to verify eyewitness reports of massacres--of which the Commission for Historical Clarification recorded 669--and to assign responsibility. Forensic research and DNA testing identified some of the remains and were used in some criminal cases.

On April 21, Spanish judge Baltazar Garzon submitted a request to the Government to have a judge depose retired General and former de-facto president Efraim Rios Montt, retired General Benedicto Lucas Garcia, retired General and former president Fernando Romeo Lucas Garcia, retired General Angel Anibal Guevara, and five others about the deaths in the 1980 takeover of the Spanish Embassy and the disappearance of four Spanish priests during the early 1980s. On December 1, the Supreme Court named criminal court Judge Saul Alvarez to the case. On December 13, a Mexican court issued an arrest warrant at the request of the Spanish government for former Minister of Government Donaldo Alvarez Ruiz, who has been living in Mexico since General Lucas Garcia left power in 1982.

Following an April 2003 first payment to the ex-PACs, in September the Congress approved a series of three additional payments. The Congress agreed to pay each former PAC member approximately \$665 (5,241 quetzals) by the end of 2006. Civil society and international human rights observers protested the indemnification, noting that former PACs were implicated in human rights abuses committed during the internal armed conflict and that the payments would further detract from other spending priorities. On November 2, former PAC members protested the lack of payment by closing highways, airports, seaports, and other transportation infrastructure. On November 24, the Public Ministry issued arrest warrants for 15 persons implicated in organizing the protests and restricting public movement. Several human rights organizations submitted a joint injunction to the Constitutional Court, questioning the legality of the payments. On December 8, the Constitutional Court issued a second provisional ruling (the first was September 21) that suspended the payments. The Court's final decision was pending at year's end. PAC leaders publicly threatened the human rights organizations for their opposition. In response to the threats, the Government provided police protection to the organizations.

On July 6, President Berger formally installed Rosalina Tuyuc, head of National Coordinator of Widows (CONAVIGUA) (which represents widows and orphans from the civil conflict), as President of the National Reparations Commission. The Commission also included seven members of civil society and numerous government agencies. Berger presented Tuyuc with a check for \$3.75 million (30 million quetzals) the first payment of up to \$37.5 million (300 million quetzals), that the Government committed to distributing annually to victims of the civil conflict over a 13-year period maximum of \$487 million (3.9 billion quetzals) total). MINUGUA issued a report during the year that identified the Government's continued support for appropriate financing of reparations as an important indicator of its commitment to human rights.

In some cases reported in 2003, evidence was not sufficient to conclude whether the killing was politically motivated. In October 2003, two persons shot and killed National Unity of Hope (UNE) party member Miguel Salvador Aguilar while attending a political meeting at the UNE headquarters in Jalapa. Two suspects were arrested and convicted; however, the convictions were overturned on appeals. On October 15, the Second Penal Court found former FRG mayor of San Cristobal Verapaz Hugo Cal Cojoc guilty for the May 2003 murder of Unionista party member Byron Vladimir Jom Cal. Cojoc was sentenced to 15 years in prison.

There was no progress and none was expected in the 2002 killing of Jorge Rosal, a regional leader of the Patriot Party.

On June 24, a court sentenced Ever Lopez Gomez and Billy Rene Barrios, to 9 and 29 years' imprisonment, respectively, for the 2002 killing of Menchu Foundation accountant Guillermo Ovalle (see Section 4).

In August, the U.N. reported that acts of "social cleansing" continued to occur. Violence against street children decreased significantly (see Section 5). There were multiple reports of women tortured, disappeared, and killed (see Section 5).

The PDH reported that during the year, there were 17 attempted lynchings, in which 5 victims died and 12 were injured, compared with 18 such attempts resulting in 14 deaths in all of 2003. The majority took place in heavily indigenous, rural areas where the justice system was least accessible. Human rights activists attributed the decrease in lynchings in 2003-04 (down from an average of 147 a year from 2000-02) to the intervention of individuals or government officials who had received training on the rule of law.

b. Disappearance

There were no reports of politically motivated disappearances; however, there were credible allegations of police involvement in kidnappings for ransom. During the year, the ORP investigated 11 police officers for involvement in kidnappings. One officer was found guilty and dismissed. Criminal charges were pending against him at year's end. The investigations of other officers were ongoing at year's end. The Organized Crime Unit of the Prosecutor's Office reported that PNC elements were involved in 11 kidnapping cases, at times in cooperation with large criminal organizations.

On May 4, PNC officers arrested former police official Rudy Arnulfo Giron Lima on charges of involvement with kidnapping the nephew of Lizardo Sosa, President of the Bank of Guatemala. The ORP also investigated six other officers in connection with the case. Giron Lima was still under investigation at year's end (see Section 5).

There were no developments, and none were expected, in the 2002 illegal detention by DOAN agents and subsequent disappearance of Humberto Orellana Sis.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, there were credible reports of torture, abuse, and other mistreatment by members of the PNC during the year. These complaints typically involved the use of excessive force during police operations and harassment or arbitrary imprisonment of commercial sex workers, suspected gang members, and others targeted during extortion schemes. There were credible reports of SIC detectives torturing and beating detainees during interrogation to obtain confessions. During the year, the PNC's ORP investigated 2,088 cases of police misconduct. The PNC dismissed 506 officers for misconduct. However, the Attorney General's office, or Public Ministry, rarely has prosecuted fired officers for criminal misconduct.

There were credible reports that PNC officials or persons disguised as police officers stopped cars and buses to demand bribes or steal private property. In some cases, the supposed police officers assaulted and raped victims.

On January 31, 8 agents of Station 12 in Guatemala City threatened, robbed, and violently beat Sergio Vasquez Hernandez. The ORP's internal investigation found the commander of the Station and three agents responsible for the theft and assault. At year's end, one agent had been convicted and sentenced to 12 years in prison; however, there was insufficient evidence to charge the others involved.

Four men claimed that on March 6, two police officers from Station 16 illegally detained and mistreated them after they refused to pay extortion money to the officers. The ORP conducted an internal investigation; however, it found no evidence to substantiate the allegations. The police allegedly involved were promoted and transferred.

On March 8, three police officers in Station 12 detained and beat Mynor Alvarado de Leon, a human rights defender from the Center for Legal Action on Human Rights (CALDH). According to MINUGUA, Alvarado de Leon was accused of murder and remained in prison for almost 5 months, although ballistic evidence and other proof demonstrated his innocence. The agents involved have not been investigated. In October, CALDH presented a report to the Inter-American Human Rights Commission on Alvarado's case and human rights violations in the national prison system.

Though the Public Ministry investigated some cases of police involvement in assaults, they did not receive any reports of and therefore did not investigate specific cases of police involvement in torture.

Casa Alianza reported that the number of incidents of killing and abuse of street children had decreased during the year (see Sections 1.a. and 5).

From January to June 8, the Government carried out 30 court orders for forced evictions of plantations that were illegally

occupied. During at least 12 of these evictions, there were credible reports that police used excessive force, including hitting civilians, burning homes and crops, and killing animals. Seventy-six percent of the evictions were conducted in Alta and Baja Verapaz, heavily agricultural areas. In 45 percent of the evictions, civilians cited labor conflicts as the reasons for their illegal invasions of the farms. Private security forces, working for plantation owners, also participated illegally in several evictions. On June 8, thousands of peasants conducted a nationwide protest against the country's land distribution and violent evictions. The Government agreed to suspend all evictions for 90 days, pending an in-depth analysis of existing land disputes and invasions. By year's end, none of the existing 89 cases of land invasions pending eviction had been resolved, though the Maria Lourdes conflict was in negotiation. The National Commission for Land Conflicts had resolved 121 land conflicts, 22 of which involved invasions, by year's end.

On August 31, members of the PNC entered the Nueva Linda plantation in Champerico, Retalhuleu, to execute a court order to evict over 1,000 peasants who illegally occupied the land. The peasants had invaded the plantation in October 2003 to protest the lack of investigation into the September 2003 disappearance and suspected killing of their supervisor, Hector Reyes Perez, the farm's administrator. An attempt at mediation by civilian and police officials ended when members of the peasant group opened fire on the police. In the ensuing conflict, 3 police and 7 workers were killed and more than 20 were injured, including 1 police officer who subsequently died from his wounds. During the eviction, police officers attacked some journalists covering the event (see Section 2.a.).

Journalists claimed to have witnessed the police commit at least three unlawful killings during the eviction. Following Nueva Linda, the Congressional Human Rights Committee, the Human Rights Ombudsman's office, and the Office of Professional Responsibility of the National Police all conducted investigations and issued reports on the operation. In its report, the Human Rights Committee stated that it could neither confirm nor deny accusations of unlawful killings, because the forensic specialist was not able to determine the causes of death of the peasants killed. The Committee faulted all persons involved in the incident: The Public Ministry, or Attorney General's office, for failing to investigate the administrator's disappearance; the PNC, for their poor preparation for the eviction; the peasant leaders, for exacerbating the conflict for personal motivations; and the Governor of Retalhuleu, Carlos Quintana Saravia, for favoritism toward landowners and abuse of power.

Prison conditions remained harsh. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical facilities. According to the registry maintained by the prison system, there were 8,698 persons being held at 40 prisons and jails designed to hold 6,974. Eighteen of the 40 centers were national prisons, which accommodated 7,854 of the total convicts and detainees; the other 22 were pretrial centers run by the PNC. Approximately 60 percent of the national penitentiary system population was held in pretrial detention. The average guard-to-prisoner ratio was 1 to 18.

Prisoners continued to complain of inadequate food and medical care. Corruption, especially drug-related, was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest. The military continued to provide perimeter security for various prisons.

Media reported that prison authorities kept 1 prisoner in a 45 square-foot cage for 18 months. The prisoner was kept without a bed and only allowed out once a day. Following a visit by an Organization of American States (OAS) Rapporteur to the prison system, the prisoner was released into a larger room, but remained in isolation.

From January until October 1, the Penitentiary System reported 2 deaths due to unnatural causes and 11 due to natural causes (including AIDS, chronic hepatitis, and tuberculosis).

The 442 female prisoners in the penal system were held in facilities separate from men; however, the conditions were equally poor. Some prison facilities allowed the minor children of detainees to reside with their mothers, although the children were provided with minimal care. Immigration detention facilities did not always hold female detainees separate from the male population.

Juvenile offenders were held separately from adults. The Secretariat for Social Welfare runs four Centers for the Treatment and Orientation of Minors: One for girls and three for boys. Prison officials reported that at least two riots took place in the juvenile facilities to protest issues ranging from a change in management to demands for improved food quality.

PNC detention centers were designed to hold only pretrial detainees; however, sometimes pretrial detainees were kept in the national penitentiaries where they were not always separated from convicts. There were sections of national prisons designated to hold only individuals convicted of misdemeanors, but those serving sentences for minor infractions were held sometimes with those who had committed serious offenses. Approximately 22 prisoners being held in pretrial detention for high-level corruption cases, primarily former officials of the previous administration, were held in separate facilities where they had more living space than the average prisoner.

The Government permitted prison visits by independent human rights observers, public defenders, religious groups, and family members, and such visits took place throughout the year.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention; however, there were credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice, arresting officers failed to satisfy legal requisites, particularly with minors and suspected gang members.

The country is divided into 6 police districts, each subdivided into 28 precincts. There are four special units, headed by police officers for: Information and intelligence; counter-narcotics; investigations; and environmental enforcement. The Director General, appointed by the President, leads the PNC. Since its inception, the 21,400-member PNC has been understaffed, poorly trained, and severely underfunded. On July 22, 2,500 PNC officers, gathered from around the country at the Police Academy to begin 24-hour patrols with the military in dangerous areas of the capital, protested the poor living conditions at the Academy (where officers from outside Guatemala City were supposed to be housed indefinitely) and alleged poor logistical planning for the patrols. During the protests, one officer allegedly committed suicide, though some evidence suggested that he was killed.

Police corruption was a problem, and there were credible allegations of involvement by individual police officers in criminal activity, including rapes, killings, and kidnappings. Rather than prosecute its officers, the PNC often transferred them to a different part of the country. Police impunity remained a serious problem.

Police sometimes threatened commercial sex workers with false drug charges to extort money or sexual favors. Police sometimes harassed homosexuals or transvestites with similar threats of false charges. Suspected gang members sometimes were imprisoned without charges or with false drug charges. Detainees were not always promptly informed of the charges filed against them.

Immigration and police officials often subjected persons attempting to enter the country illegally to extortion and mistreatment. Many observers believed this mistreatment is underreported.

All PNC members must meet minimum education requirements, pass an entrance examination, and undergo screening to detect suspected human rights violators and involvement in criminal activities. During the year, training for new recruits was extended from 6 to 11 months. The Ministry of Interior also increased the monthly allowance for students at the police academy, from \$62.50 to \$100 (500 to 800 quetzals). Police training incorporated courses on human rights and professional ethics in the curriculum; however, none of the 20,000 officers trained since 1997 has received refresher training. The military continued to incorporate human rights training into its curriculum and developed human rights courses with the Human Rights Ombudsman. Civil Affairs Officers at each command were required to plan and document human rights training provided to soldiers. A separate human rights office within the Office of the Minister of Defense was open to active participation by the human rights community.

There were 21,382 PNC officers or 1 for every 560 persons. Presence outside of the capital improved; however, approximately two-thirds of those police districts remained understaffed. A 2003 U.N. Development Program (UNDP) report calculated that only 5,000 police officers were on duty at any given time, country-wide, after accounting for officers suspended, on medical leave, on vacation, or on embassy or personal protection assignments. The PNC reported that 3,015 of its officers were indigenous.

According to the Ministry of Government, approximately 110,000 private security guards, of which at least 60,000 were unauthorized, worked in the country. According to the Gremial Federation and Security Association, approximately half worked for firms that had not completed legal requirements and were owned by former soldiers and former policemen. On October 9, Minister of Interior Carlos Vielmann suspended the authorization of new security companies.

The PNC ORP performs internal investigations of misconduct by police officers. The ORP has a strong corps of investigators and has shown considerable improvement in professionalism; however, its independence and effectiveness were hampered by the lack of material resources and the absence of cooperation from other PNC units. In isolated cases, ORP investigators appeared to participate in cover-ups of police misconduct. The ORP reported that it received 2,088 complaints, which included: 51 cases of homicide, 306 cases of abuse of authority, 360 thefts, 343 cases of corruption or bribery, 145 threats, and 69 illegal detentions. Cases with sufficient evidence to indicate that criminal acts were committed were forwarded to the Public Ministry for further investigation and prosecution, but cases rarely went to trial. Throughout the year, ORP closed 1,062 cases, and its investigations resulted in the dismissal of 506 and exoneration of 433 police officers.

MINUGUA commended the January establishment of the PNC Disciplinary Tribunal as an advance in the control and supervision of police activities and professional ethics. By September 1, the Tribunal had resolved 19 of 26 serious police abuse cases, applied sanctions to 18 police officers, and exonerated 19 officers following ORP investigations.

No active members of the military served in the police command structure. The Government did employ the military to support the police temporarily in response to the rising rates of violent crime. In July, Minister of Government Carlos Vielmann ordered joint police and military operations in 40 red zones, areas with the highest crime rates, in the capital. Human rights organizations noted that the Government could do more to strengthen police institutionalism instead of deploying military in joint patrols.

The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for more than 6 hours without bringing the case before a judge. Once a suspect has been arraigned, the prosecutor generally has 3 months to complete his investigation and file the case in court or seek a formal extension of the detention period. The law also provides for access to lawyers and bail for most crimes.

There were no reliable data on the number of arbitrary detentions, although most accounts agree that police forces routinely ignored writs of habeas corpus in cases of illegal detention. Police reportedly detained street children and suspected gang members to remove them from the streets for the 3-month period allowed for imprisonment during investigations. Most of these detainees did not have sufficient funds to post bail and therefore were forced to remain in prison.

The law sets a limit of 3 months for pretrial detention; however, prisoners often were detained past their legal trial or release dates, sometimes for years. During the year, 60 percent of those incarcerated were in pretrial detention. Prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or to other bureaucratic problems.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the judicial system often failed to provide fair trials due to inefficiency, corruption, insufficient personnel and funds, and intimidation of judges, prosecutors, and witnesses. MINUGUA's final report noted, "judicial impunity continues being more the norm than the exception." The large majority of serious crimes still are not minimally investigated or punished. Many high-profile human rights cases remained pending in the courts for long periods as defense attorneys employed numerous dilatory appeals and motions. Courts sometimes took months to resolve even patently frivolous appeals. There were numerous credible allegations of corruption, manipulation, and intimidation in the judiciary. There were credible reports of the killing and threatening of witnesses, which continued to be a problem (see Sections 1.a. and 1.c.). Less than 3 percent of crimes committed were prosecuted, and significantly less received convictions.

The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. During the year, The Judicial Discipline Unit investigated and held hearings for 112 of 535 complaints of wrongdoing that it had received, with the result that 65 claims were found to be baseless, 17 magistrates received written or verbal warnings, 22 judges were suspended, and the remaining cases were still under investigation at year's end.

In its efforts to investigate crimes and prosecute offenders, the Public Ministry has been hampered by inadequate training and equipment, excessive caseloads, and insufficient numbers of qualified investigators. Prosecutors remained susceptible to intimidation and corruption. In addition, the law's failure to delineate the responsibility for investigating crimes between the PNC and the Public Ministry led to rivalries between these organizations, as well as the duplication of investigative efforts. Only an estimated 3 percent of approximately 250,000 complaints filed with the Public Ministry annually were prosecuted. The Public Ministry's budget for the year was \$57 million (458 million quetzals), which amounted to a 22 percent increase from 2003, though Attorney General Juan Luis Florido stated the amount was still insufficient.

On February 24, President Berger dismissed Attorney General Carlos De Leon for poor performance. Many human rights leaders applauded the removal of De Leon, who had been suspected of corruption, but have continuing concerns about the weak justice system. Under new Attorney General Juan Luis Florido the Public Ministry opened a series of investigations into corruption schemes involving government civilian and military officials from the previous Administration.

The government's Public Ministry and the Judiciary continued efforts to reform the judicial system. Twenty justice centers, which bring together judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, and civil society in a team approach to dispute resolution and problem solving, provided efficient public service. Clerk of Court offices streamlined case processing, increased transparency, improved customer service, and virtually eliminated corruption in local case management. An analogous system was inaugurated in Guatemala City in the Prosecutor's Office Case Intake Unit. At the Prosecutor's Office Victim's Unit in the capital, doctors and nurses were on call 24 hours a day to assist rape and other crime victims and to gather evidence for their cases (see Section 5). Similar units operated in every department of the country.

The judiciary is composed of the Supreme Court, appellate courts, trial courts, and probable-cause judges (who function like grand juries). There also are courts of special jurisdiction, such as labor courts and family courts, which also are under the jurisdiction of the Supreme Court. The Constitutional Court, which reviews legislation and court decisions for compatibility with the Constitution, is independent of the rest of the judiciary. There are several community courts in indigenous rural areas.

The Constitution requires that Congress elect all Supreme Court and appellate court magistrates every 5 years from lists prepared by panels composed of active magistrates, representatives of the bar association, law school deans, and university rectors. The elections were held in October.

Judges and prosecutors continued to receive threats designed to influence pending decisions or to punish past decisions. Death threats and intimidation of the judiciary were common in cases involving human rights violations. Witnesses often were too intimidated to testify. Plaintiffs, witnesses, prosecutors, and jurists involved in high-profile cases against members of the military or police reported threats, intimidation, and surveillance. Those involved in government corruption cases also were targeted.

Some judges were denied private health and life insurance because their jobs were too dangerous. Between January and August, the Public Ministry had approximately 50 persons in its witness protection program. By October, the Special Prosecutor for Crimes against Judicial Personnel had investigated 80 cases, compared with 114 in 2003, but lacked the personnel and resources necessary to carry out his mission. From January to October, four justice workers, including two judges, were killed,

another six were victims of attempted killing, and two were seriously injured by firearms.

In July, witnesses to the 1982 Plan de Sanchez massacre who had testified before the IACHR, began to receive death threats (see Section 4.).

Witnesses to the 1982 Rio Negro massacre and lawyers on the case received numerous threats in the months leading up to the October 19 opening of the trial for six former PACs (three were convicted in 1998 (see Section 1.a.).

Throughout the summer and fall, the Special Prosecutor for Human Rights' office indicted 20 persons for inciting the July 2003 Black Thursday riots in support of former General Efraín Ríos Montt's presidential candidacy. Journalist Hector Ramirez died of a heart attack during the riots. Ríos Montt, Secretary General of the FRG, remained under house arrest for his suspected role in the riots. In addition, the Supreme Court said that it would determine whether to strip immunity from four congressional representatives and two mayors. Many witnesses refused to testify out of fear of reprisal (see Section 4).

On March 11, a former Special Prosecutor for Human Rights was followed and stopped by two individuals, who identified themselves as members of the military and threatened her in relation to the investigation of Black Thursday.

The Law on Judicial Careers regulates the income, terms of office, promotion, training, disciplining, and other activities of judges and magistrates and mandates a 6-month training course for all newly appointed judges. The Judicial Career Council reviews performance evaluations of judges and complaints against persons in the judicial system. The Council is responsible for selecting judges as well as disciplining them in accordance with the law's criteria for sanctions.

On July 22, Jesus Mendoza, cousin of Bamaca case witness Otoniel de la Roca Mendoza, was shot and killed (see Section 1.a.).

The Criminal Procedures Code provides for the presumption of innocence, the right to be present at trial, the right to counsel, plea-bargaining, and the possibility of release on bail. Trials are public, allowing victims, family members, and human rights groups to observe the process. Three-judge panels render verdicts. The Criminal Procedures Code provides for oral trials; however, only those attorneys who have graduated since 1994 have had any real training in oral trials. The Code also provides for language interpretation for those who require it; however, this provision was honored rarely due to budgetary and other constraints (see Section 5). The Public Ministry, which is semi-independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-plaintiffs. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to excessively long pretrial detention (see Section 1.d.). Courts showed little willingness to exercise discretion in dismissing apparently frivolous or patently invalid motions. As a consequence, parties used such motions as delaying tactics, frequently holding up trials for months or even years.

The Supreme Court's budget for the year was \$106 million (852 million quetzals), which was a 9.1 percent increase from 2003.

There were no political prisoners. On August 19, a court acquitted of all charges of involvement in a Social Security Institute embezzlement scandal union leader Rigoberto Duenas, who had been imprisoned for more than 14 months. Several former government officials, imprisoned on corruption charges, including former Vice-President Reyes Lopez and former Minister of Finance Weymann, claimed that the charges against them were politically motivated.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, there were reports that the authorities sometimes disregarded these prohibitions. There were unsubstantiated claims that some military and former military personnel continued to monitor private communications. Former members of security forces were suspected of participating in a number of illegal entries into the homes of human rights defenders during the year. The Public Ministry investigated a number of these cases but failed to identify suspects for prosecution.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and press, and the Government generally respected these rights in practice; however, there were credible reports that members of the media were targets of attacks, threats, and intimidation from unidentified persons. The Human Rights Ombudsman reported 40 reports of intimidation against journalists through October, compared with 90 during 2003.

In addition to regular and open criticism of government policies, the print media publicized communiques from human rights organizations, unions, and groups opposed to the Government and its policies. The press criticized the military and other powerful sectors and also regularly published stories on reputed drug traffickers, official corruption, and clandestine intelligence networks.

During the August 31 land eviction of Nueva Linda, police beat at least three journalists from Nuevo Diario and Xcable and confiscated media equipment (see Sections 1.a., 1.c., and 4).

In May, Hector Ramirez and David Hernandez Rubio, sons of journalist Hector Ramirez, who suffered a fatal heart attack during the July 2003 riots, petitioned the IACHR for personal protection following a series of threats against their family (see Sections 1.a. and 4). At year's end, the brothers were pressing charges against retired General Rios Montt and former government officials for their father's death. On May 19, two men attacked and beat Hernandez.

The Public Ministry charged two suspects with the June 2003 home invasion of daily El Periodico publisher Jose Ruben Zamora. The case was scheduled to be tried in 2005.

The Government did not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.

Peaceful demonstrations were common. There were numerous protests by a wide variety of groups around the country to demonstrate on a wide variety of issues; however, on at least one occasion, the demonstration became violent. Police usually acted with restraint; however, there were some allegations of unnecessary use of force or, at times, inaction.

On August 13, over 5,000 persons participated in a nationwide "March Against Violence," organized primarily by the office of the Human Rights Ombudsman and the Catholic Church.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice. There is no state religion; however, the Constitution explicitly recognizes the separate legal status of the Catholic Church.

The Government did not subsidize religious groups. Members of a religion need not register to worship together. However, the Government requires religious congregations (other than the Catholic Church), as well as other nonreligious associations and NGOs, to register as legal entities to transact business.

Practitioners of Mayan spirituality were sometimes the victims of discrimination and aggression from other religious denominations, particularly conservative protestant denominations in rural areas.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

The Constitution prohibits forced exile, and the Government did not use it. However, self-imposed exile was an occasional response by citizens who feel threatened or intimidated.

The Constitution provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government granted refugee status or asylum. The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for those 18 years of age and older. Ballots are secret. Members of the armed forces and police may not vote.

In the second-round runoff presidential election in December 2003, Oscar Berger of the GANA coalition won a 4-year term with approximately 54 percent of the vote. In the period leading up to the elections, at least 29 candidates for lower offices were killed, and many incidents of violence occurred (see Section 1.a.). Despite some minor irregularities in the electoral registry, the OAS international observation mission categorized the elections as free and fair, with a 56 percent voter turnout in the first round and 49 percent in the runoff.

Voters elect the 158-member, unicameral Congress every 4 years. Deputies are elected both from districts and from a nationwide list, the latter providing an element of proportional representation. Congress can and does act independently of the Executive.

On April 22, Congress approved legislation that provides for the establishment of a single national identification and voting registration document and the establishment of voting centers outside of the biggest municipalities to increase indigenous participation.

The Government pursued prosecutions of numerous members of the former administration in relation to corruption and money laundering. In May, the authorities arrested Eduardo Weymann, former Minister of Finance, for his alleged role in embezzlement of the Tax Administration (SAT). On July 14, the authorities arrested former Superintendent of the SAT, Marco Tulio Abadio, for embezzlement and money laundering. On July 28, the authorities arrested former Vice President Reyes Lopez on charges of fraud. At year's end, Oscar Dubon Palma, former Controller General, was in prison awaiting trial on fraud charges.

The military budget, traditionally classified, has been vulnerable to embezzlement since there was no public scrutiny of spending. Since February, numerous high-ranking military officers, including three former Ministers of Defense, have been arrested or investigated for misuse of military funds. The Berger administration declassified 80 percent of the military budget.

In February, former President Alfonso Portillo fled the country to Mexico after allegations were made that he laundered money stolen from the defense budget. At year's end, the Government had not charged Portillo or requested his extradition from Mexico.

In general, there were no mechanisms in place to provide access to official information; however, on January 6, a judge ordered the Ministry of Defense to make available all files from the now-defunct Presidential Military Staff (EMP) to the office of the Human Rights Ombudsman (see Section 4). The Ombudsman, with assistance from several human rights NGOs, copied thousands of EMP documents for future analysis to assist in locating children who disappeared during the civil conflict and to learn more about the military's operations in that time period (see Section 4).

There were no legal restrictions on the participation of women in the political process. Approximately 44 percent of the 5 million registered voters were women. In November 2003, voters elected 14 women to the 158-member Congress. Women held two seats on the Supreme Court and one rotating alternative position on the Constitutional Court. There were two female ministers in the cabinet, the Minister for Finance and the Minister of Education. There were two female presidential secretaries, one for Women's Issues and one for Social Welfare. Only 8 of 331 mayors were women.

The Constitution provides for equal rights for indigenous people, who make up approximately 43 percent of the population. Some attained high positions as judges and government officials, but indigenous people still were underrepresented significantly in politics due to limited educational opportunities and pervasive discrimination (see Section 5). There was one indigenous member in the Cabinet. One of 12 presidential secretaries was indigenous. Of 158 members of Congress, 9 were indigenous. There were 111 indigenous mayors, out of 331. Most indigenous mayors were elected in the northern and western departments of the country.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views. However, many NGOs and human rights workers received threats or were intimidated by unidentified persons. Senior government officials met with international human rights monitors; however, some government officials questioned the credibility of both domestic human rights workers and international monitors. While many international human rights organizations and their workers did not enjoy formal legal status, they continued to operate openly.

During the year, several U.N. and OAS representatives visited the country: The U.N. Special Rapporteur on Violence against Women; the U.N. Special Rapporteur on Racism and Discrimination; the OAS Special Rapporteur on Guatemala and Violence against Women; the U.N. Special Rapporteur on the Right to Food; the OAS Special Rapporteur on Prison Conditions; and the OAS Special Rapporteur on Children. During her visit, the OAS Special Rapporteur on Guatemala noted that the country had made considerable improvement during the year, as evidenced by the willingness shown by the authorities to protect and promote human rights.

Human Rights Ombudsman Sergio Morales, elected by Congress in 2002 for a 5-year term, reports to Congress and monitors the rights provided in the Constitution. The Ombudsman's rulings do not have the force of law. The budget assigned to the Ombudsman by Congress, unchanged in 2003 and during the year, was approximately \$5 million (40 million quetzals). Upon the expiration of the MINUGUA's mandate in December, the Human Rights Ombudsman's Office assumed MINUGUA's human rights verification function.

The President's Commission on Human Rights (COPREDEH) is charged with formulating and promoting the Government's human rights policy, representing the government for past human rights abuse cases before the IACHR, and negotiating

amicable settlements in those cases before the Inter-American Commission on Human Rights. At the beginning of his administration, President Berger named human rights leader Frank LaRue as the Director of the COPREDEH. With the support of the President, COPREDEH accepted responsibility on behalf of the State for all three cases that were heard by the IACHR during the year: The 1982 Plan de Sanchez massacre (see Sections 1.a. and 1.e.); the 1993 murder of Jorge Carpio Nicolle; and the 1981 disappearance and presumed murder of youth Marco Molina Theissen. The OAS noted that the country took steps to increase cooperation on human rights violation committed by the Government in the past. COPREDEH implemented IACHR orders to provide police protection to seven human rights activists.

The number of threats against human rights defenders decreased slightly from 2003, threats against justice workers remained approximately the same as 2003, and threats against journalists decreased by almost half. There were few threats against human rights defenders from January until June. In early July, the number of intimidations increased dramatically and remained high until October, when it fell again. The National Movement for Human Rights, which registers and tracks intimidations against human rights workers and journalists, reported that there were approximately 122 threats and break-ins during the year, in comparison with 125 incidents in 2003. MINUGUA's final report noted, "though human rights defenders work with much more liberty than previously, reports of intimidation continue, although to less of a degree than during the previous administration." During the year, the Special Prosecutor's Office for Human Rights received 47 new cases. Acts of intimidation included anonymous telephoned or written threats, break-ins, and surveillance of workplaces, residences, and vehicular movements. Prosecutors, judges, and witnesses in various human rights cases, notably in the Black Thursday and Plan de Sanchez cases, also reported being the targets of various acts of intimidation (see Section 1.e.). Some of the attacks showed sophistication and technical expertise. Like most prosecutions, the majority of human rights cases remained pending for lengthy periods without being investigated or languished in the courts as defense attorneys filed numerous motions and appeals to delay trials.

In February, unknown persons threatened the life of Eloida Mejia Samayoa, President and Legal Representative of Asociacion Amigos del Lago Izabal (Friends of Lake Izabal), which opposed the reactivation of mining activities in Izabal Department. The threats followed the February 10 killing of environmental activist Enrique Alcantara in Puerto Barrios. The Public Ministry was investigating the threats and the death at year's end.

The Legal Center for Human Rights (CALDH) and the Plan de Sanchez community reported approximately 20 incidents of intimidation during the year. CALDH, which provides legal support in human rights cases, supported the members of the Plan de Sanchez community at April 23 and 24 IACHR hearings on the 1982 massacre. In March, a CALDH driver was carjacked and questioned before being released. On September 7, the police captured a suspect for the theft, who remained in prison while the Prosecutors requested a police line-up to enable the driver to identify his assailant. However, in November, a judge denied the request and the Public Ministry planned to release the suspect because of insufficient evidence. CALDH requested police protection from the IACHR, which was approved and coordinated by COPREDEH. In July, intruders twice broke into the home of a CALDH director and, in a separate incident, broke into a CALDH office annex in Guatemala City. In July and September, several witnesses in the IACHR case reported receiving bomb threats and another CALDH employee was carjacked.

On July 7, Lesbiradas, an organization for the promotion of the rights of lesbians, received at least six threatening phone calls. The Public Ministry was investigating the case at year's end.

The Ombudsman received threats throughout the year. On August 9, its Auxiliary Office in Coatepeque closed for 3 days after armed men threatened its personnel regarding the investigation of the recent killing of the mayor of Genova. According to the Ombudsman's spokesperson, the threatened individuals received police protection and reopened the office on August 12.

From August to September, ANN Congresswomen Nineth Montenegro, President of the Human Rights Committee and former director of the Mutual Support Group, received 20 threatening phone calls. Unknown individuals broke the windows of her vehicle, broke into her home, followed her car, and loitered in front of her home.

On October 6, the Quiche Penal Court convicted and sentenced Miguel Xon Morales (cousin of the victim) to 15 years in prison for the April 2003 murder of human rights activist and Mayan priest Diego Xon Salazar (see Section 1.a.).

The only witness to the May 2003 killing of Mayan priest Gerardo Camo Manuel was unable to identify a suspect, and the case was closed in September (see Section 1.a.). There was no progress in the investigation of the July 2003 home break-in of Norma Maldonado, an activist working with Mama Maquin, a rural indigenous women's group.

A trial of four former security guards and one other suspect for the August 2003 burglary of the Ombudsman's Department of Investigation remained pending at year's end.

In March, the PNC captured Jeronimo Chicoj Saquic, a suspect wanted for the September 2003 killing of Eusebio Macario, a community organizer and founding member of the Council of Ethnic Communities. The Public Ministry theorized that Macario's killing was related to a land conflict. On September 28, the Quiche Penal Court absolved the detainee because of insufficient evidence. While in prison, he allegedly threatened Macario's family.

On June 24, Ever Lopez Gomez and Billy Rene Barrios were sentenced to 9 and 29 years' imprisonment, respectively, for the 2002 killing of Menchu Foundation accountant Guillermo Ovalle (see Section 1.a.).

On March 11, a court acquitted three suspects of the 2002 torture and killing of Manuel Garcia de la Cruz, a member of CONAVIGUA.

On February 25, the National Day for the Dignity of Victims of Violence, President Berger publicly announced his support for a 2003 proposal by the Human Rights Ombudsman to establish a U.N. commission (CICIACS) to investigate and prosecute clandestine groups. After two Congressional Committees issued recommendations against CICIACS in early May, President Berger formally requested that Congress return the proposal to the Executive. The President then asked the Constitutional Court to review the proposal. On August 31, the Court ruled that several of CICIACS's elements, principally the provisions for independent investigations and prosecutions by other than designated legal authorities, were incompatible with the Constitution. In September, President Berger met with U.N. Secretary General Kofi Annan to explore possibilities for a CICIACS reconfigured to meet Constitutional Court concerns. On November 19, Vice President Stein sent a letter to Kofi Annan stating that the Government would fight clandestine groups through the Public Ministry and by continuing to seek opportunities to implement CICIACS.

In August, the Attorney General named Betty Gudiel as Special Prosecutor for Crimes against Human Rights Defenders. The staff of the office was cut by more than half during the year. Despite these cutbacks, the office made significant progress on numerous proceedings and won several convictions during the year (see Section 1.e.). The unit's staff reported receiving support for cases from the Public Ministry leadership.

On December 31, MINUGUA closed its offices after 10 years of monitoring implementation of the human rights provisions of the Peace Accords. Its final report in August concluded that the country had "laid a firmer foundation on which to construct a better future." In recent years, MINUGUA staff had trained the Ombudsman to take over many of its monitoring functions, especially on agrarian and discrimination issues.

At year's end, Congress had not ratified the December 2003 agreement to establish a local office of the United Nations High Commissioner for Human Rights (UNHCHR). The agreement went to Congress for ratification in March. Though the Human Rights Committee recommended the establishment of the office, the Foreign Relations Committee recommended against the project. To overcome Congressional objections, the Executive renegotiated the agreement with the UNHCHR in December. If ratified, the UNHCHR office would monitor the general human rights situation in the country and report annually on its activities and make recommendations to the Commission.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution states that all persons are free and equal in dignity and rights and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. However, in practice, the Government frequently was unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system (see Sections 1.c. and 1.e.).

Women

Violence against women, including domestic violence, remained common among all social classes. There was a significant increase in reports of women tortured, disappeared, and killed (see Sections 1.a. and 1.c.). The Law on Domestic Violence provides that the Public Ministry, the national police, family courts, legal clinics, and the Human Rights Ombudsman's Office may receive complaints of domestic violence. However, domestic abuse itself is not punishable by prison sentences, and Public Ministry prosecutors noted that the law allowed them to charge abusers with assault only if bruises from the abuse remained visible for at least 10 days. The law provides for the issuance of restraining orders against alleged aggressors, police protection for the victims, and the law requires the PNC to intervene in violent situations in the home. However, women's groups noted that few officers had any training in victim assistance or working with domestic violence. The Program for Prevention and Eradication of Intrafamily Violence (PROPREVI), a government program under the First Lady's Secretariat of Social Work, reported that it received approximately 12 calls a day via its emergency hotline from battered women and children.

The Public Ministry reported receiving almost 10,000 complaints of family violence against women and children in Guatemala City during the year; only approximately 370 cases went to trial. In accordance with the Law on Domestic Violence, 1,364 orders of restraint against domestic violence aggressors and police protection for victims were issued. Full investigation and prosecution of domestic violence and rape cases usually took an average of 1 year, and prosecutors noted that half of victims of domestic violence who filed complaints never returned to pursue their cases after their initial visit to the Public Ministry. The Network for Non-violence Against Women estimated that 90 percent of incidents went unreported.

The office of the Ombudsman for Indigenous Women, led by Maria Zapeta Mendoza, provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. It also coordinated and promoted action by both government institutions and NGOs to prevent violence and discrimination against indigenous women; however, it lacked the human resources and logistical capacity to perform its functions on a national level. The Ombudsman's budget was \$221,250 (1.77 million quetzals). Like most government agencies, it was forced to reduce spending by 20 percent because of fiscal constraints. The office handled 440 cases from January until August and 3,159 cases since 2002, including labor conflicts and domestic violence.

Sexual offenses remained a problem. The Prosecutor's Office reported receiving 749 cases of rape and sexual assault between

January and October in Guatemala City. Eighty four of these cases went to trial: 68 aggressors were convicted and sentenced to an average of 6 to 20 years in prison; 11 persons were absolved; and 5 cases were settled out of court. Over 3,000 rapes were reported countrywide. The Supreme Court received 1,777 rape cases country-wide from January until September. UNICEF observed that rape victims sometimes did not report the violations for lack of confidence in prosecutions and fear of reprisals.

The Penal Code defines rape and aggravated rape as crimes and establishes penalties of 6 to 50 years. The Penal Code does not define sexual assault as a crime. Prosecutors from the Special Unit for Crimes against Women noted that reports of rapes had increased by 30 percent over the past 4 years. Some observers believed that increases in reported rapes over the past 5 years did not reflect an increase in the number of rapes committed but rather an increased willingness on the part of victims to come forward and improved record-keeping of crime statistics. Police have little training or investigative capacity for investigating or assisting victims of sexual crimes.

Sexual harassment is not illegal, so there were no accurate estimates of incidents. However, human rights and women's organizations reported that harassment was widespread, especially in industries in which workers are primarily women, such as the maquila sector.

Prostitution is not illegal; however, procuring and inducing a person into prostitution are crimes that can result in either fines or imprisonment, with heavier penalties if minors are involved. Trafficking in women and minors, primarily for the purpose of prostitution, is illegal and was a more broadly recognized problem (see Section 5, Trafficking).

The PNC reported that approximately 527 women were killed during the year, compared with 383 in 2003. The percentage of killings of women in comparison to total killings rose from 11.5 percent in 2003 to 12 percent during the year. Some victims were tortured before death, and others had their corpses mutilated. In April, then Minister of Government Arturo Soto created a PNC taskforce to investigate killings of women.

The Constitution asserts the principle of gender equality; in practice, however, women faced job discrimination and were less likely to hold management positions. The 2002 National Study on Income and Spending showed that indigenous women earned 58 percent of what indigenous men earned and nonindigenous women earned 71 percent of what non-indigenous men earned. Some women were subjected to pre-employment pregnancy tests. Women were employed primarily in low-wage jobs in the textile and apparel industries, agriculture, retail businesses, and the public sector. More women than men were employed in the informal sector of the economy, where pay and benefits generally were lower. Women may legally own, manage, and inherit property on an equal basis with men.

More than 50 percent of urban girls and 81 percent of rural girls dropped out before completing high school, and an estimated 70 percent of adult women never received formal education. UNICEF's 2003 report indicated that the female adult literacy rate was 80 percent that of males. Over 10,000 women were enrolled in universities in the pursuit of degrees in medicine and law.

The Secretariat for Women's Affairs advises the President on the coordination of policies affecting women and their development.

Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors; however, the Government did not devote sufficient resources to ensure adequate educational and health services for children. While fiscal considerations forced the Government to cut overall spending by 30 percent, it managed to increase spending on education; health spending remained approximately the same. Approximately 2 percent of the country's GDP was devoted to education, and less than 1 percent to health.

The Constitution provides for compulsory education for all children up to the sixth grade. However, less than half the population has received a primary education. According to the Ministry of Education, in 2003, only 11 percent of children who registered for primary school passed their respective grade. The UNDP's 2003 Human Development Report estimated that only 40 percent of children who enter primary school finish their third year and only 30 percent are promoted beyond sixth grade. Completion rates were even lower in rural and indigenous areas. The average education level attained varied widely based on background and geographic region. The average non-indigenous child received 5.6 years (boys received 6 years compared with 5.3 years for girls). Indigenous children, who are also more concentrated in rural areas, received an average of 2.2 years (boys 2.8 and girls 1.6). The Ministry of Education attempted to improve these indicators by granting special scholarships to girls and working or orphaned children.

UNICEF's 2003 Report estimated the under-5 mortality rate at 58 per 1,000 live births. Public health analyses showed that 60 percent of the cases of infant mortality and 76 percent of the cases of maternal mortality were preventable through attention to basic health and environmental measures that have been neglected. In 2003, the Ministry of Health provided services to 87 percent of children under 15 and 58 percent of women over 15. According to the UNDP, an estimated 20 percent of the population did not have access to any type of institutional health services. Boys and girls had equal access to medical care. In December, the U.N. reported that 24 percent of the population suffered from malnutrition, up from 16 percent 10 years earlier.

Child abuse remained a serious problem (see Section 1.c.). The Public Ministry reported 798 cases of child abuse during the

year. In May, the Congressional Committee on Women and Children created a Commission for Children and Youth, made up of government and NGO representatives, to promote children's issues, in accordance with the Child Protection Law of June 2003. The Social Secretariat for the Welfare of Children has oversight for the children's welfare programs, treatment and training for children, and special education assistance for children. The Secretariat provided shelter and assistance to children who were victims of abuse; however, these children sometimes were placed with other youths who had committed crimes (see Section 1.c.). Because of overload in the public welfare system, family courts also referred 350 abused children to Casa Alianza in 2003-04, and sent many children to other NGOs. The Special Prosecutor's Office for Women included a unit that investigated only child abuse cases.

Child prostitution was a problem (see Section 5, Trafficking).

Child labor was a problem. According to the International Labor Organization (ILO), 23 percent of children must work to survive (see Section 6.d.).

The internal conflict left approximately 200,000 orphans. Approximately 10,000 children were members of street gangs. Credible estimates put the number of street children at 5,000 nationwide, approximately 3,000 of them in Guatemala City. Most street children ran away from home after being abused. Casa Alianza reported that increased gang recruitment decreased the number of street children in the capital. During the year, Casa Alianza reported that 173 children were killed in Guatemala City from January until August 31, compared with 585 throughout the country in 2003. Criminals often recruited these children into thievery, prostitution, or drug rings.

The Government and a number of NGOs operated youth centers; however, the funds devoted to them were not sufficient to address adequately the problem. The Government maintained one shelter each for girls and boys in Guatemala City. These shelters provided housing for the homeless and incarceration for juvenile offenders.

Trafficking in Persons

The law prohibits trafficking in persons for purposes of prostitution; however, the government's failure to codify prohibitions on broader trafficking issues inhibited law enforcement efforts to fight this growing practice.

The Public Ministry prosecutes traffickers under four sections of the Penal Code, three of which carry fines from \$187 to \$1,875 (1,500 to 15,000 quetzals) and a fourth which specifically criminalizes trafficking for prostitution and imposes punishments from 1 to 3 years in prison and a fine of \$250 to \$625 (2,000 to 5,000 quetzals). Though the maximum penalty for trafficking is prison time, magistrates have imposed no more than a fine. Throughout the year, the Ministry of Foreign Affairs, some members of Congress, and NGOs have lobbied for improved legislation with stiffer sanctions. The Ministry of Foreign Affairs led an inter-institutional working group on trafficking in persons to improve agency coordination and develop new legislative proposals to combat the practice; meetings were held at least monthly.

In February, the Public Ministry formed a special unit within the Special Prosecutor's Office for Crimes against Women to investigate trafficking cases. The Office conducted 20 bar raids during the year, with assistance from the Special PNC Unit for Trafficking in Persons and observers from Casa Alianza. They opened 45 cases against traffickers, and by year's end, 6 traffickers had been convicted of sexual exploitation of minors (a separate offense) and fined \$375 to \$800 (3,000 to 6,000 quetzals). The Public Ministry rescued 16 minor victims of trafficking, who were provided shelter by Casa Alianza.

On March 24, the Government signed an agreement of cooperation with Mexico on the protection of minor victims of trafficking and smuggling on the Mexican border. Repatriation agreements for minor victims of trafficking also exist with El Salvador, Nicaragua, Honduras, Costa Rica, and Panama.

The country is a source, transit, and destination country for Guatemalan and other Central American women and children trafficked for the purposes of sexual exploitation. One NGO report identified 600 to 700 minors in centers of prostitution across the country. To a lesser extent, there were reports (but no reliable estimates) of forced labor trafficking, mainly involving children used in begging rings in Guatemala City.

Trafficking was especially a problem in the capital and in towns along the borders with Mexico and El Salvador. Child migrants who failed to cross the border into Mexico often remained in the country and resorted to or were forced into prostitution. Many women and children also were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings that forced them into prostitution. The primary target population for sexual exploitation was minor boys and girls or young women from poor families. The traffickers often approached these individuals with promises of economic rewards, jobs in cafeterias or beauty parlors, or jobs in other countries. The means of promotion included flyers, newspaper advertisements, and verbal or personal recommendations. Traffickers also used force, coercion, fraud, and deception.

Brothel owners often were responsible for transporting and employing victims of trafficking. Traffickers of persons frequently had links to other organized crime, including drug trafficking and migrant smuggling.

There were credible reports of police and immigration service involvement and complicity in trafficking of persons. In a 2002

study by ECPAT (the local chapter of the NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes), some minor victims of trafficking reported that immigration officials took bribes from traffickers, gave the victims falsified identification papers, and allowed them to cross borders. There were credible reports that brothel owners allowed police and migration officials to have sex with minor victims without charge. On May 4, police arrested a senior police official, Rudy Giron Lima, for his involvement in kidnapping (see Section 1.b.). Investigators learned that he co-owned three brothels, and underage prostitutes were found at all three.

The Secretariat for Social Welfare, a government institution, had one shelter that housed victims of trafficking and offered social casework, job training, and counseling.

Immigration officials generally deported overage trafficking victims but did not treat them like criminals. From February to December, Immigration officials deported 468 women, who were found during bar raids, back to Honduras, Nicaragua, and El Salvador. Victims were not prosecuted and were not required to testify in cases against traffickers.

The Secretariat of Social Welfare provided educational materials on child sexual exploitation to the public primary and secondary school system. Immigration also launched a campaign at all border crossings to educate the public on the risks of trafficking.

The Government released minor trafficking victims rescued in bar raids to the custody of Casa Alianza, which provided them with shelter, medical treatment, psychological counseling, and job training. A number of other NGOs provided similar services and lobbied for legislation, protection of victims, and prevention of trafficking.

Persons with Disabilities

The Constitution provides that the State should protect persons with disabilities. The Law for Protection of the Elderly and the Law on Attention to Disabled Persons mandate equal access to public facilities, prohibit discrimination based on disability, and provide other legal protections. The laws stipulate equal opportunity for persons with disabilities in health, education, work, recreation, sports, and cultural activities. They also provide that all persons with disabilities receive the benefits of labor laws and social security and have the right to work. In addition, the laws provide for equal educational opportunities, mandatory building access codes, and the right to equal pay. However, persons with physical disabilities suffered discrimination in education and employment practices, and few resources were devoted to combat this problem. Persons with disabilities have limited access to health care, recreational facilities, and work opportunities. A report by the International Disability Rights Monitor noted that the Government discriminated against persons with disabilities by not providing adequate protection.

Educational resources for those with special needs were scarce, and the majority of the universities were not handicapped accessible. The National Hospital for Mental Health, the principal health care provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staffing. During the year, the Ministry of Education provided services to 4,187 children with special needs. Of these, 160 were in mainstream schools, and the rest attended 16 special education schools.

The National Council for the Disabled, composed of representatives of relevant government ministries and agencies, met regularly to discuss initiatives; however, no resources were devoted to the implementation of their recommendations.

Indigenous People

The Constitution, recognizing that the country is composed of diverse ethnic groups, obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, social organization, and manner of dress of indigenous people.

Indigenous people constitute 43 percent of the population; however, they remained largely outside the country's political, economic, social, and cultural mainstream. A World Bank study conducted during the year stated that 76 percent of the indigenous population lived in poverty, in comparison with 41 percent of the non-indigenous population. There was no single indicator of indigenous status, but there were at least 22 separate Mayan ethnic groups, each with its own language. In addition, there was an indigenous Xinca community of some 6,000 persons. The Garifuna, descendants of Africans brought to the Caribbean region as slaves who later migrated to South and Central America, were a separate minority group.

MINUGUA's final report noted that the number of bilingual teachers and judicial workers was increasing gradually, but bilingual classes were available still only to 10 percent of school-age indigenous children. A number of judicial rulings confirmed the right to practice indigenous spirituality and wear typical clothing. The Presidential Commission Against Discrimination and Racism, created in 2003 and confirmed by the Berger administration, evaluated the state's actions and made recommendations to reduce discrimination. The majority of the provisions regarding indigenous rights were incomplete in the 2000-04 timetable for the implementation of the Peace Accords. During the year, the Government took some steps to implement programs to include bilingual and intercultural components in education; however, few concrete changes had taken place at year's end.

In December 2003, the Congress passed the "Law of Languages," which mandated the use of Mayan languages in public sectors like health, education, and justice. Also in December 2003, the Government gave the Academy for Mayan Languages the frequency for a television channel and a large building that was formerly occupied by the military. In addition, the

Government gave the Academy a 2004 budget of \$3.1 million (25 million quetzals), a large increase from previous years, to aid the strengthening of the use of Mayan languages and their use in the public domain. In December, the President and Vice-President participated in the official opening of a project to construct a Mayan University, that had been mandated in the Peace Accords.

The commissions established to discuss the implementation of constitutional provisions relating to indigenous rights met during the year to formulate recommendations to the Government regarding protection of indigenous culture, languages, traditions, lands, and sacred sites.

The Labor Ministry had a Department of Indigenous People to investigate cases of discrimination and promote implementation of International Organization of Labor (ILO) Convention 169 on the rights of indigenous workers. Although the Department had no separate budget and only four employees and, for lack of resources, did not investigate any discrimination claims, it acted as a representative for indigenous rights. As an example, the office worked to represent local indigenous interests in public and private sector discussions of potential open-pit mines in rural areas.

Rural indigenous people had limited educational opportunities and fewer employment opportunities. For this reason, indigenous men constituted a high percentage of the military's ranks. Many indigenous people were illiterate, and approximately a third did not speak Spanish; more than half of indigenous women were illiterate; and a disproportionate number of indigenous girls did not attend school (see Section 5, Women and Children). The Government devoted less than 10 percent of the total budget to bilingual education, and the Ministry of Education had yet to implement the recommendations made by the Commission on Educational Reform.

Indigenous people arrested for crimes often were at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings; however, reports continued that indigenous people did not have equal access to the justice system. The Public Ministry concentrated 16 interpreters in former conflict areas of the country, and the Public Defender's Office employed 9 bilingual public defenders and assigned them to areas where they could serve as translators in addition to defending their clients. Despite government efforts, there were 63 judges who spoke Mayan languages in 561 tribunals around the country. The number of court interpreters increased from 22 in 2003 to 62 during the year and the Supreme Court reported that the judicial system had 569 employees who spoke indigenous languages. Though bilingual judicial personnel were assigned often to areas where their second languages were not spoken, NGOs noted that the Court had made an effort to improve bilingual employee distribution during the year. Only 14 percent of police officers were indigenous. Better efforts were made to assign these officers to towns where their language skills could be used, and approximately 75 percent of them worked in the geographic area of their particular linguistic competency.

Two groups worked to represent indigenous people. A national Congress of Mayan People created the National Assembly of Representatives of the Mayan People, which selected representatives from 16 departments and installed the members in February. The National Assembly entered into dialogue with the National Council of Mayan Peoples to unify positions on indigenous demands of the Government.

Section 6 Worker Rights

a. The Right of Association

The Constitution and the Labor Code provide for freedom of association and the right to form and join trade unions; however, in practice, enforcement of the Code remained weak and ineffective. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces. Less than 3 percent of the work force was unionized.

Legal recognition of a new industry-wide union requires that the membership constitute one-half plus one of the workers in an industry. Labor activists considered this requirement a nearly insurmountable barrier to the formation of new industry-wide unions.

The law prohibits retribution for forming unions and for participating in trade union activities; in particular, the Labor Code prohibits employers from firing workers for union organizing and protects them from being fired for 60 days following notification to the Labor Ministry that a union is being formed. Thereafter, they can be fired for cause, unless they are members of the union's executive committee. However, enforcement of these provisions was weak. Many employers routinely sought to circumvent Labor Code provisions to resist unionization or simply ignored both the provisions themselves and judicial orders to enforce them. An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities in the past.

There were credible reports of retaliation by employers against workers who tried to exercise internationally recognized labor rights. For example, in June, the Secretariat of Social Welfare fired 22 individuals the day after they submitted a list of members of a fledgling union. Though the Secretariat cited budget constraints and poor work as the reason for the dismissals, it hired replacements who received the same pay and benefits. A court ordered the reinstatement of the workers, but the Secretariat appealed the decision. Judicial orders are not binding until appeals are settled, which can take years. The Secretariat rehired

two of the individuals after they resigned their union membership. The case was pending at year's end.

The most common violation of freedom of association was the dismissal of workers for unionizing activity. The Ministry of Labor received 2,972 complaints of illegal firings in the first half of the year, approximately equal to the number during the same period in 2003. Some workers who suffered illegal dismissal took their cases to the labor courts and won injunctions ordering reinstatement. The labor courts reported issuing 532 such orders from January to September. Appeals and re-appeals by the employers, along with legal recourse such as re-incorporation as a different entity, often prolonged proceedings. Like courts elsewhere in the country, the labor courts often did not dismiss apparently frivolous appeals, nor were their decisions enforced. According to Labor Ministry officials, the labor courts vindicated the majority of workers' claims against employers; however, employers complied with the court decisions in only a small number of cases and rarely were disciplined for ignoring legally binding court orders.

Employees were reluctant to exercise their right of association for fear of reprisal by employers, according to labor leaders and advocates. Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated. In addition, the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the long-standing hostility between the business establishment and independent and self-governing labor associations all constrained the exercise of worker rights.

Labor leaders reported death threats and other acts of intimidation. A 3-person Special Prosecutor's Office for Crimes Against Unionists and Journalists accepted 45 new union-related cases during the year, thereby raising its total case load to over 200. Prosecutors secured only one conviction, a 10-year prison sentence for a homicide that occurred in 2003. Both labor leaders and the Special Prosecutor for Union Leaders reported that there were no killings of union leaders during the year.

An active "solidarismo" (solidarity) movement claims to have approximately 170,000 members in approximately 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between them or to belong to both. The Government viewed these associations as civic organizations that need not interfere with the functioning of trade unions. The Labor Code stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers; however, unions charged that management promoted solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. Representatives of most organized labor groups criticized these associations for not permitting strikes, having inadequate grievance procedures, and for displacing genuine, independent trade unions with an employer-dominated structure.

From January until September 10, the Labor Ministry granted legal status to 45 new unions. One thousand six hundred fifty-six unions have been registered in the country; however, only 379 were active (229 in the public sector and 132 in the private sector). These unions represented a total membership of more than 56,000, however, many unions did not submit their membership lists to the Government. Some parties estimated actual union membership to be in excess of 100,000, although no official registry exists. Ministry of Labor sources noted that the 56,000 number corresponded to 3 percent of the labor force in the formal sector. The registered unions were generally independent of government and political party domination.

Despite efforts to restructure and modernize the labor court system, the system remained ineffective. There are 28 labor courts: 7 in the capital and 21 outside it. An additional nine courts address labor issues, primarily appeals, as part of their jurisdiction. The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, a heavy backlog of undecided cases, and failure to enforce effectively court rulings all contributed to the labor courts' lack of credibility and effectiveness. The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating Labor Code violations compounded the weakness of the labor courts.

The Ministry of Labor continued efforts to improve the labor inspection system by increasing the number of positions of labor inspectors; supervising and evaluating inspectors' performance; computerizing the case filing system; creating a new inspection Unit for Maquila workers and Unit for Minors; and hiring three attorneys to reopen the Legal Unit in inspections. In July, the Ministry of Labor fired approximately 25 percent of its labor inspectors for cause. By August, it had hired replacements for most of the dismissed inspectors.

Workers illegally invaded the Maria Lourdes plantation in Genova Costa Cuca, Quetzaltenango in November 2003 to recoup wages they claimed were never paid. In June, the farm's administrator and head of private security allegedly raped a 15 year-old girl and beat her 13 year-old brother. Some labor leaders claimed that the attack was an attempt to intimidate the workers into leaving voluntarily. Though the children reported the attack and identified both men to the Prosecutor in Quetzaltenango, no progress had been made in the case.

b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively; however, the small number of unionized workers limited the practice of collective bargaining. The Labor Code requires that union members must approve a collective bargaining agreement by simple majority.

Twenty five percent of the workers in a factory or business must be union members for collective bargaining to take place. Management and labor honored collective contracts at some firms. In others, management, and sometimes labor, chose to

ignore selected provisions of binding collective bargaining agreements. According to the Ministry of Labor, 14 collective bargaining agreements were registered from January to September, covering nearly 1,400 workers. Most workers, including those organized in trade unions, did not have collective contracts documenting their wages and working conditions, nor did they have individual contracts as required by law. According to the Labor Ministry, only 3.3 percent of the workforce had a contract legally registered with the ministry. During the year, 137,168 individuals filed work contracts with the Ministry of Labor.

Workers have the right to strike; however, the very low level of unionization and procedural hurdles made legal strikes rare. The Labor Code requires approval by simple majority of a firm's workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The Labor Code empowers the President and his cabinet to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services," an authority that the Government rarely used. Employers may suspend or fire workers for absence without leave if authorities have not recognized their strike as legal. The strike regulation law calls for binding arbitration if no agreement is reached after 30 days of negotiation.

There were no legal strikes during the year, although teachers, farm workers, and labor groups in the formal and informal sectors held illegal or unofficial work stoppages.

There are 52 collective bargaining agreements (covering more than 14,000 unionized workers and many thousands of non-unionized workers) between employers and workers in a variety of sectors. Although public sector workplaces dominated the list of collective bargaining agreements, agricultural, textile, and other manufacturing sectors were also represented.

Labor laws and regulations apply throughout the country, including the few export processing zones (EPZs). Maquilas operated under an EPZ-like regime, although they were not located in distinctly established areas. Unions have had minimal success organizing workers in EPZs and in the maquila sector. Only three enterprises in the maquila sector have registered unions, two of which have achieved collective bargaining agreements. Organizing activities were affected by employer intimidation and pressure, according to labor leaders and activists.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, including by children; however, some women and minors were trafficked for the purpose of sexual exploitation (see Section 5). There were reports that employers sometimes forced workers to work overtime, often without the premium pay mandated by law (see Section 6.e.). Forced or compulsory labor by children generally did not occur; however, the ILO reported that children worked as domestics in private homes without labor law protections (see Section 6.d.).

d. Prohibition of Child Labor and Minimum Age for Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. The informal and agricultural sectors regularly employed younger children, usually in small family enterprises. Economic necessity forced most families to have their children work to supplement family income, particularly in rural and indigenous communities. According to the ILO, 23 percent of minors under age 18 worked during the year, up from 20 percent in 2000. The ILO estimated that 507,000 children age 7 to 14 years (20 percent of this age group) were engaged in work. The Ministry of Labor estimated that in the 7 to 14 age group, almost twice as many boys work as girls, and almost twice as many indigenous children work as non-indigenous. Most minors worked at household chores, in subsistence agriculture, in family-run enterprises, and elsewhere in the informal economy.

The law prohibits minors from work in establishments where alcoholic beverages are served, from work in unhealthy or dangerous conditions, and from night work and extra hours (the legal workday for persons younger than 14 is 6 hours; for persons 14 to 17 years of age it is 7 hours). A joint ILO/UNICEF/World Bank report found that, despite these protections, child laborers worked on average 47 hours per week.

The ILO's International Program on the Elimination of Child Labor (IPEC) launched projects to combat child labor in the fireworks industry, in the production of gravel, in the growing of coffee and broccoli, in domestic service, and in the commercial sex industry. The Labor Ministry estimated that approximately 3,000 children were employed in the illegal cottage-based fireworks industry; approximately 10 percent of them in factories, while others, under the age of 14, typically worked at home on piecework taken in by their families. Accidents occurred regularly in the fireworks industry. According to press reports, an average of 30 persons per year, the majority minors, suffered burns and amputations from accidents in the fabrication of fireworks.

Laws governing the employment of minors were not enforced effectively due to the weakness of the labor inspection and labor court systems. The Labor Ministry granted 20 work permits for minors under age 14 between January and August 23, compared with 119 in all of 2003. Many children under the age of 14 worked without legal permission and were vulnerable to exploitation. Their illegal status made them ineligible to receive social benefits, social insurance, vacations, or severance pay, and they often earned salaries below the minimum wage.

A 2002 ILO report, based on a National Statistic Institute survey, indicated that 38,878 children worked as domestics in private homes. Domestic employees are exempt from many labor law protections. In the capital, three-quarters of the children worked

13 to 16 hours a day, and their average monthly salary was approximately \$51 (395 quetzals). Many domestic workers suffered psychological mistreatment, including sexual abuse.

The Child Worker Protection Unit within the Ministry of Labor enforces restrictions on child labor and educates minors, their parents, and employers on the rights of minors in the labor market. The National Commission for the Elimination of Child Labor developed an operational plan to implement the 2000 National Plan to Eradicate Child Labor.

In its 2003 country report, the Inter-American Commission on Human Rights noted that, with ILO-IPEC backing, the Government offered scholarships and free meals during the year to encourage families to send to school children who had formerly worked in the broccoli, coffee, gravel, and fireworks industries.

e. Acceptable Conditions of Work

The law sets minimum wages. Noncompliance with minimum wage provisions in the rural and informal sectors was widespread. A 2001 government survey, the most recent available, noted that only 60 percent of the working population received the minimum wage or more. Advocacy groups, focused on rural sector issues, estimated that more than half of workers engaged in day-long employment in the rural sector did not receive the wages, benefits, and social security allocations required by law.

The Ministry of Labor oversees a tripartite committee that makes recommendations for increases in the minimum wage. In the event that agreement is not reached in the tripartite commission, the Government may decree such increases based on recommendations of the Labor Minister. The daily minimum wage was \$4.86 (38.6 quetzals) in agriculture and \$4.96 (39.7 quetzals) in commerce. The law requires an incentive bonus be added to this minimum wage for all hours worked, effectively raising the daily minimum wage to \$5.63 (45 quetzals) in agriculture and \$5.79 (46.3 quetzals) in commerce.

On June 30, a new minimum wage came into force that provided increases of 21 percent for agricultural workers and 16 percent for non-agricultural workers.

The minimum wage did not provide a decent standard of living for a worker and family. In its 2003 Human Development Report, the UNDP estimated that 57 percent of the population lived below the poverty line and 21.5 percent in extreme poverty. The Ministry of Labor conducts inspections to monitor compliance with minimum wage provisions; however, the Ministry of Labor lacked the resources to enforce the minimum wage law adequately.

The legal workday is 8 hours and the workweek is 48 hours; a tradition of longer hours remained in place in certain sectors. These limits do not apply to domestic workers. For day shift workers, the standard 6-day workweek is 44 hours; for night shift workers, it is 36 hours; for swing shift workers, it is 42 hours. Time-and-a-half pay is required for overtime work. The Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charged that employers sometimes forced workers to work overtime, often without legally-mandated premium pay. Labor inspectors reported uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system and enforcement of court orders, inhibited adequate enforcement of the law.

Occupational health and safety standards were inadequate and enforcement remained weak. During the year, the Ministry of Labor participated in a number of regional international initiatives intended to sensitize employers and workers to health and safety risks in the workplace. The Labor Ministry provided training courses for labor inspectors in health and safety standards and gave such training priority.

When serious or fatal industrial accidents occurred, the authorities often failed to investigate fully or assign responsibility for negligence. Employers rarely were sanctioned for failing to provide a safe workplace. Legislation requiring companies with more than 50 employees to provide on-site medical facilities for their workers was not enforced; however, most large employers did provide such facilities for their employees. The fireworks industry was particularly hazardous (see Section 6.b.). Workers have the legal right to remove themselves from dangerous work situations without reprisal. However, few workers were willing to jeopardize their jobs by complaining about unsafe working conditions.

Human rights and labor organizations alleged that women workers, particularly in the domestic and maquila manufacturing sector, suffered discrimination and sexual harassment.

Maquilas, which employed approximately 108,000 persons, the vast majority of whom were female, often forced women to reveal whether they were pregnant as a condition of employment.